

Notice of Allowability

Application No.

10/810,747

Examiner

James R. Brittain

Applicant(s)

GRADL, STEVEN E.

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to applicant's communication of December 4, 2006.
2. ☒ The allowed claim(s) is/are 1-6,8-13,24,18,19,21 & 25; renumbered 1-17, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 12042006
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: The closest art or record is May et al. (US 5660479) and Kettner (US 5749658) as utilized in combination in the last office action. Applicant provides reasons for allowance for claim 18 in the response received December 4, 2004 on page 6, ¶6 through page 7, ¶4 as reproduced below and incorporated herein.

May does not teach or suggest a sealant layer having a generally teardrop shape. The Examiner relies upon Kettner to make up for the deficiencies of May. In particular, the Examiner states that FIG. 5a of Kettner shows a bead that is generally teardrop shaped.

Referring to FIG. 5a of Kettner, Kettner discloses a base strip 20 of a zipper 21. Thin bands 45 of a heat setting compound 28 are distributed on the inner surface 26 of the base strip 20. Each of the thin bands 45 has a hemispherical shape, not a teardrop shape.

It is noted that a term of a claim must be given its plain meaning absent any alternative definition provided in the specification. "Plain meaning" refers to the ordinary and customary meaning given to the term by those of ordinary skill in the art. MPEP 2111.01. The plain meaning of the adjective "teardrop" is used in the context of describing something that is shaped like a dropping tear. (See Webster Dictionary, 9th Ed.) It is respectfully submitted that it is impermissible to broaden the disclosure of hemispherical shaped bands, as the Examiner proposes. It is further submitted that FIG. 5a of Kettner simply does not show bands having a teardrop shape.

The Examiner further states that Kettner establishes that it is well within the level of skill in the art to vary the shape of the sealant layer. While Kettner discloses that the heat setting compound 28 can be distributed in thin bands 45, one uniform band, or two bands, there is simply no teaching or suggestion of providing the heat setting compound in the shape of a teardrop. Moreover, knowledge held by those skilled in the art applies to common facts of "notorious character" or "capable of such instant and unquestionable demonstration as to defy dispute." M.P.E.P. §2144.03. The teardrop shape of the sealant layers is not of notorious character and unquestionable demonstration. Applicants respectfully request proof of Examiner's position to the contrary.

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." M.P.E.P. §2143.03. At least because neither May nor Kettner teaches or suggests providing sealant layers having a generally teardrop shape, Applicants respectfully submit that independent claim 18, and dependent claims 19, 21, and 25 are patentable.

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Since the first and second sealant layers each have a teardrop shape that is a globular shape at one end, tapering to a point at the other end and applicant specifically differentiates this shape from that of the applied references and is in combination to “define an open air gap between the first profile member and a first layer of web material and the second profile member and a second layer of web material” (claim 1, lines 13-15), this subject matter is allowable.

Similarly with respect to claim 18, since the first and second sealant layers each have a teardrop shape that is a globular shape at one end, tapering to a point at the other end and applicant specifically differentiates this shape from that of the applied references and is in combination to “define an open air gap between the first profile member and a first layer of web material and the second profile member and a second layer of web material” (claim 18, lines 13-15), this subject matter is allowable for the same reasons identified above.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Drawings

The drawings received July 26, 2004 have been approved.

Conclusion

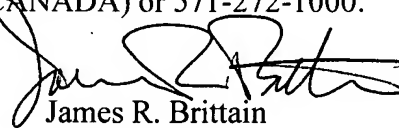
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065.

The examiner can normally be reached on M-F 5:30-2:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James R. Brittain
Primary Examiner
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JRB